IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4720 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION LTD.

Versus

SIDHRAJ P VANK

Appearance:

1. Special Civil Application No. 4720 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR AS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner and Mr.I.S.Supehia, learned advocate for respondent workman.

The petitioner Corporation has challenged the

award passed by the Labour Court, Junagadh in Reference No.197 / 1997 dated 21st December, 2000, wherein the labour court has set aside the dismissal order and granted reinstatement with continuity of service with 40 % backwages of the interim period. This Court has issued RULE making it returnable on 4th April, 2002 and also granted ad-interim relief qua backwages only. Learned advocate Mr.Munshaw on behalf of the petitioner has submitted that the respondent workman has been reinstated in service and that statement has been confirmed by learned advocate Mr.Supehia. Therefore, it is clear that the respondent workman has been reinstated in service in pursunace of the award in question passed by the Labuor Court concerned.

Learned advocate Mr.Munshaw for petitioner Corporation has submitted that the respondent workman remained absent for a period from 1st April, 1994 to 18th May, 1994 and on that basis, after issuing chargesheet, departmental inquiry was conducted against the respondent workman and he was dismissed from service on 27th January, 1995. The respondent workman had raised industrial dispute after period of two years which referred for adjudication on 12th August, 1997. Therefore, learned advocate Mr.Munshaw has submitted that the respondent workman is not entitled to any backwages from 27th January, 1995 to 12th August, 1997. Mr.Munshaw has further submitted that the respondent workman was working as Driver and therefore, on account of his absence, administrative work of the Corporation had suffered which caused inconvenience to the corporation as well as to the public at large. Learned advocate Mr.Munshaw has further submitted that the labour court has committed error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947. Mr.Munshaw has further submitted that the labour court has ignored the document at Exh.47 whichat security report was placed on record which reflects that the respondent workman was gainfully employed. He has further submitted that though departmental inquiry has been admitted by the respondent workman, even though, the labour court has considered question of hardships of punishment in question. Therefore, learned advocate Mr.Munshaw submits that the resp ondent workman remained absent even in Departmental Inquiry and therefore, the labour court has committed error in passing such award which requires to be interfered with by this Court while exercising its inherent powers.

Learned advocate Mr.I.S.Supehia appearing on behalf of the respondent workman has submitted that the

respondent workman when remained absent, he had informed the concerned authority for remaining absent and there was various correspondence between the re spondent workman and the officer. That said correspondence was produced on record and considering such correspondence, the labour court has rightly come to the conclusion that misconduct which has been alleged against the respondent workman is not proved against the respondent workman. Once misconduct is not proved against the respondent workman, then the labuor court is right in granting relief in favour of the respospondent workman. He also submits that even the labour court has considered default car ds wherefrom it has not reflected that the respondent workman has repeated the misconduct of remaining absent as charged against the workman and therefore, the labour court has considered all the evidence produced by the respective parties and passed ap propriate orders and hence, no intereference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution of India.

I have considered submissions of the learned advocates for parties. The labour court has given reasons in support of its conclusion in para-11 of the award in question. The respondent workman has not challenged the legality and validity of the departmen tal inquiry proceedings. The labour Court has considered the chargesheet being Chargesheet No.86 / 1994, wherein allegations were made that the respondent workman remained absent for a period from 1st April, 1994 to 18th May, 1994. Exparte inquiry was conducted by the petitioner Corporation. The labour court has considered that the respondnet workman has stated in his statement of claim that during this period, he was sick and he had informed the concerned authority even though concerned officer has no t taken note of request made by the workman and that letter has been produced on record by the respondent workman. The labour court has come to the conclusion that exparte inquiry was conducted and therefore, the respondent workman was not afforded a rea sonable opportunity to defend his case and therefore, in that circumstances, it was the duty of the petitioner Corporation to prove misconduct before the labour court but the Corporaiton has not led any oral evidence. However, considering totality of the facts and circumstances of the case, the labour court has exercised the powers under Section 11-A of the I.D.Act . The Labour court after considering the default card as well as oral evidence of the respondent workman that he remained unemployed during the interim period, granted 40 % backwages of the interim period.

However, from the record before the labour court, it transpires that the document at Exh.47 is the report of the security officer , wherefrom said report dated 18th September, 1999, the security officer has mentioned that the respondent workman was loo king after and managing affairs of Kailash Trasport. Thus, it transpires that the workman was gainfully employed during the interim period. However, this report has been ignored by the labour court. No doubt, the security officer was not examined before the labour court by the petitioner Corporation but this document has been exhibited with the consent of the respondent workman. Therefore, this document was required to be taken into consideration by the labour court while passing such awad but it seem s that this aspect has been grossly ignored by the labour court. Considering this fact, according to my opinion, the direction which has been issued by the labour court granting reinstatement with continuity of service, for that, the labour court has not committed any error and therefore, this Court is not inclined to disturb such relief granted by the labour court. The labour court has also considered gravity of misconduct of remaining absent due to sickness and therefore, punishment of dismissal in su ch circumstnaces is rightly considered by the labour court as harsh and unjustified.

But the question is whether the relief of grant of 40 % backwages as awarded by the labour court is justified to what extent in view of the fact that the workman was gainfully employed as per the document Exh.47. Therefore, according to my oipinion, considering the fact that the respondent workman was dismissed from service on 27th January, 1995 and raised the industrial dispute with effect from 12th August, 1997 and hence, for this delayed period, the workman is not entitled to any benefit of backwages. Therefore, the relief of grant of 40 % backwages in favour of the respondent workman, in above circumstnaces, seems to be on higher side and therefore, if the same is reduced to 20 % with effect from 12th August, 1997, will meet the ends of justice between the parties.

In above view of the matter, present petition requires to be allowed partly and the same stands allowed partly. The award passed by the labour court, Junagadh in Reference No.197 / 1997 dated 21st December, 2000 is modified to the effect that instead of gra nt of 40 % backwages from the date of dismissal, now the respondent workman is entitled to 20 % backwages with effect from 12th August, 1997 till the date of award - 21st December,

2000. The rest of the directions granting reinstatement with continuity of service is not disturbed by this Court and the same stands unaltered.

Learned advocate Mr.Supehia on behalf of the respondent workman has requested this Court to issue some suitable directions on the petitioner Corporation to pay 20 % backwages within some reasonable time. Considering the request of leanred advocate Mr.Supehia, it is directed to the petitioner Corporation to pay 20 % backwages to the respondent workman with effect from 12th August, 1997 till 21st December, 2000 within period of two months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above. No order as to costs. Direct Service to respondent is permitted.

Date : 24-4-2002 [H.K.RATHOD, J.]

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